

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9646 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAKHAMANBHAI RAJABHAI HADI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR. MR ANAND, G.P. with Ms.Ami Yagnik, A.G.P. for
Respondent No.1 - State

SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/01/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu - Lakhamanbhai Rajabhai Hadi has brought under challenge the detention order dated 8th August 1996 rendered by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985),

hereinafter referred to as "the PASA Act".

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to this petition. They inter-alia indicate that the petitioner has been carrying on criminal and anti-social activities by preparing and selling the country liquor and one offence dated 15th October 1994 and two offences respectively dated 13th May 1996 and 6th July 1996 have been registered against the petitioner in Kodinar Police Station under the relevant provisions of the Bombay Prohibition Act.

Over and above the aforesaid cases of prohibition reliance has also been placed on the statements of two witnesses recorded on 3rd June 1996 referring to the incidents which occurred in the previous year, viz. 1995. That is how the Detaining Authority has come to the conclusion that the petitioner had been carrying on the aforesaid illegal activities and also creating an atmosphere of fear affecting adversely public order as also pubalic health.

3. I have heard the learned Advocate for the petitioner and the learned G.P./A.G.P. for the State.

4. The petitioner has challenged the aforesaid order of detention on number of grounds, inter alia, on the ground of delay inasmuch as the cases and the incidents which have been relied upon relate back to the previous year, viz. 1995 and one case also relates back to 1994. Although there is no Affidavit in Reply to the aforesaid ground of delay which appears in Para : 4(r) of the petition, it has been submitted on behalf of the respondents that the delay would stand explained by the fact that the witnesses have given their statements regarding the petitioner's activity on or around 3.6.1996. However, the fact remains that the cases as also the incidents referred to in the statement of witnesses relate back to the year 1995. In the context of such facts reliance has been placed on the decision of the Honourable Supreme Court in the case of P.N.Paturkar V/s. S. Rama Murti, reported in A.I.R. 1994 SC 656. There the reference has been made to an earlier decision of the Apex Court in the case of A.T.Abdul Rehman V/s. State of Kerala, reported in (1989) 4 SCC 741 : AIR 1990 SC 225. Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of

detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of five months and eight days from the date of registration of the last case and of more than four months from the submission of the proposal. The statements were obtained only after the detenu became successful in getting bail in all the cases registered against him. In so far as the present case is concerned, the facts as noted above speak for themselves. The result is that the decision in P.N.Paturkar's case (supra) would be applicable to the facts of the present case.

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of decision in P.N.Paturkar's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu Lakhmanbhai Rajabhai Hadi shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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